IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1225 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMARSINHJI B. VAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1225 of 1992

MR AD OZA for Petitioner No. 1-2

MR IM PANDYA AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI

Date of decision: 01/10/2004

ORAL JUDGEMENT

The petitioner Amarsinhji Bhupatsinhji Vaghela,

President of Jivandeep Kelevani Mandal has filed this petition under the affidavit of Shri Harmanbhai Parmar dated 20.2.1992 and prayed relief to declare that the impugned order at Annexure - C dated 24.4.1991 withholding the salaries and maintenance grant of the petitioner is illegal and unconstitutional and to declare that the petitioner school is entitled to all the grants in view of the provisions of the grant-in-aid code and by way of interim relief, the petitioner has prayed to restrain the respondents from withholding the maintenance grant and all other available grants for the petitioner. While filing this petition, the petitioner has annexed various documents namely, copy of the order dated 2.5.1986 granting recognition of the school, copies of the orders dated 10.10.1986 and 2.9.1987 granting permission for standard 9 and 10, copy of the order dated 20.3.1991 of the DHE releasing salary grant on having 7 acres of land and copy of the order in Sp. C.A No. 1593 of 1991 along with rules.

2. The learned Single Judge vide order dated 26.2.1992 issued notice, which was made returnable on 12.3.1992. Thereafter on 16.2.1994, the Court has passed following order :-

> "Rule. To be heard along with Special Civil Application No. 394 of 1991. Interim relief to the effect that all grants shall not be withheld on the ground that the petitioner school does not own and possess the land of 15 acres. However, this release of grant shall be subject to result of the petition without prejudice to the rights and contentions of the parties. "

3. Though the petition is pending since 1992 and pending for final hearing, the respondent authorities have not filed any reply in this proceedings.

4. As per order, this petition is ordered to be heard with Special Civil Application No. 394 of 1991, by which, the said petition was also ordered to be heard along with other Special Civil Application Nos. 394/91, 5011/91 and 5012/91 and others.

5. While circulating this matter, the office has annexed the judgement of the learned Single Judge namely my brother Judge Mr. R.K. Abichandani dated 28th July, 2000, by which, learned Single Judge has disposed off group of petitions by common judgement including the petition being Special Civil Application No. 394 of 1991.

6. I have gone through the order dated 28th July, 2000, by which, learned Single Judge has after considering the Rule 125 and the action initiated by the authorities has come to the conclusion as under :-

> "That the conditions for grant are to be prescribed by the authority providing for the grant. Therefore, the Court cannot go behind the decision of the Government fixing the area of the land which is required for the purpose of teaching agriculture as the main craft. Therefore, the requirement of 15 acres appearing in Rule 125 of such land maintained for the purpose of teaching agriculture cannot be relaxed by the Court."

The learned Single Judge has further observed as under :-

> "In this view of the matter, the impugned orders and actions in all these petitions to the extent that grants are withheld or refused on the ground of want of ownership of the land, are hereby set aside and the concerned authorities are directed to reconsider the cases of all these petitioners in light of the observations made this judgement and pass fresh orders within two months from the date of the receipt of writ of this order in accordance with law. It will be open for the petitioners to make representations in their respective cases as stated by their learned counsel within two weeks from today. If such representations are made, they will be duly considered before making the order. Rule is made absolute accordingly with no order as to costs in each of these petitions."

7. In this petition, the petitioner has also prayed the similar relief and also as per order dated 16.2.1994, which I have reproduced hereinabove, this matter is ordered to be heard with Special Civil Application No. 394 of 1991 and as the said Special Civil Application No. 394 of 1991 is disposed off in these group of matters, this matter is not listed with those group of petitions, otherwise, this petition would have been decided in that group of petitions.

8. In view of this and as the learned Single Judge has disposed off group of petitions, which were filed on

the similar relief, I am fully agree with the finding recorded by the learned Single Judge and I dispose off the present petition on the same line. I am told that judgement of the learned Single Judge in those matters have not been challenged by the parties. In view of this, the present petition deserves to be allowed on the same ground. Rule is made absolute. If the petitioner wants to make representation, the petitioner shall make representation to the authority as early as possible and authority shall decide the same in accordance with law before passing any order.

(D.K. Trivedi, J.)
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